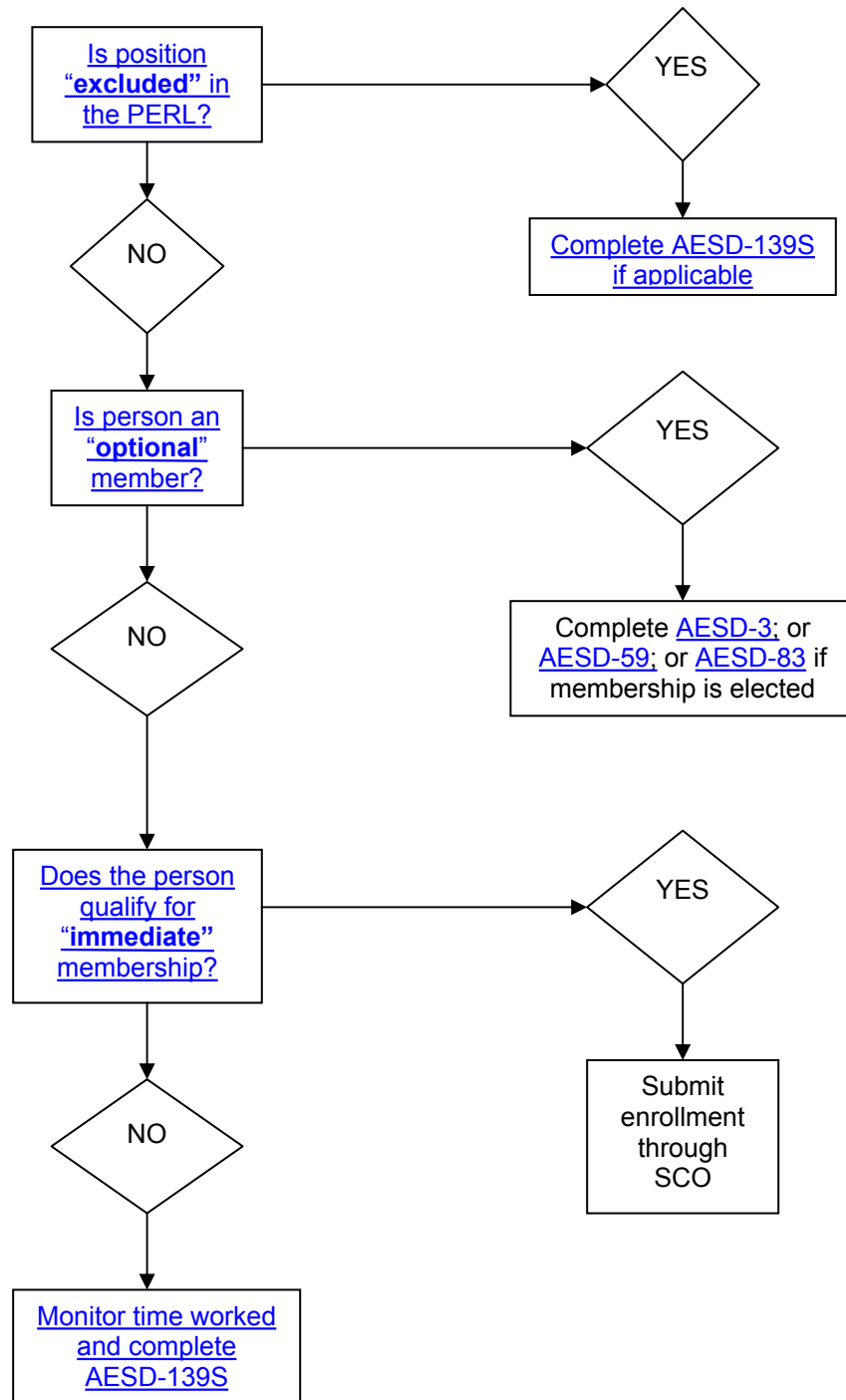


## DETERMINING MEMBERSHIP ELIGIBILITY



## POSITIONS EXCLUDED BY RETIREMENT LAW (PERL) FROM CALPERS COVERAGE

### EXCLUSIONS FROM MEMBERSHIP – GENERAL

#### A. MEMBERS OF OTHER RETIREMENT SYSTEMS:

Persons who are receiving service credit in another public retirement system (federal, state, county, city, or other local) are excluded from receiving credit with CalPERS for that same service by Government Code Section 20303.

Note: Persons **can** have dual membership in two or more public retirement systems, as long as it is for **different service**.

EXCEPTION: Section 20303(b)(4) provides that persons participating in a “supplemental defined benefits plan” that has received a ruling from IRS that the plan qualifies under Section 401(a) of the Internal Revenue Code, where the plan provisions state that CalPERS is the primary plan for these employers, and plan participation will not in any way interfere with CalPERS benefits, are **not** prohibited from such dual participation.

#### B. HEALTH & WELFARE OR TRADE RATE EMPLOYMENT:

Employees hired in Skilled Trades classifications are excluded from CalPERS if payments are made to the Health & Welfare Fund of the Union. (Use Account Codes NA or NH, depending on whether the employee has Medicare coverage.) If the employee is not entitled to have payments made to Health & Welfare fund, then you would use normal CalPERS eligibility rules for determining membership.

#### C. INDEPENDENT CONTRACTORS:

Independent contractors are not “employees” and are excluded from membership in CalPERS by Government Code Section 20300(b). An Independent contractor is someone who contracts to do a piece of work according to his/her own methods, and is subject to his/her employer’s control only as to the **end product or final result** of work, and not as to the means and manner in which the work is performed.

CalPERS uses the “Common Law Control Test” extracted from the [State Administrators’ Handbook](#), as a guide to determining employee/contractor status.

#### D. ELECTED OR APPOINTED OFFICERS:

Government Code sections 20320-20325 exclude certain public officers and employees from membership unless an election is filed with CalPERS to waive the exclusion and establish membership. Those persons qualifying for “optional” membership rights are predominately, but not limited to, elected and appointed officers of public agencies, schools, and the State of California. Refer to the “Optional Members of CalPERS” section for more complete information to determine who is excluded but eligible under optional member provisions.

#### E. STUDENT AIDS IN THE SPECIAL SCHOOLS OF THE STATE DEPARTMENT OF EDUCATION

Persons who are students, as well as employed, at one of the special State schools for the blind, deaf, and neurologically handicapped individuals are excluded from membership in such positions.

#### F. CALIFORNIA CONSERVATION CORPS PARTICIPANTS

Participants, other than staff officers and employees, are excluded from membership.

#### G. ASSEMBLY FELLOWS, SENATE FELLOWS, AND EXECUTIVE FELLOWS

Program employees are excluded. For CSU employees **only**, this is Class Code 2944. Once the employee becomes a member, this time may be purchased as Service Prior to Membership.

#### H. INMATES OF STATE INSTITUTIONS

(e.g. prison/penitentiary or mental hospital): Such persons are excluded from CalPERS membership by Section 20300(a) even if receiving compensation for such services they perform.

## POSITIONS EXCLUDED BY RETIREMENT LAW (PERL) FROM CALPERS COVERAGE

### EXCLUSIONS APPLICABLE ONLY TO CALIFORNIA STATE UNIVERSITY

**A. STUDENT ASSISTANTS** – with following Class  
Codes:

1869 – Resident Assistant  
1870 – Student Assistant  
1871 – Student Trainee, Work Study on  
Campus  
1872 – Student Trainee, Work Study off  
Campus  
1874 – Bridge Student Assistant  
2355 – Graduate Assistant

**B. EXTENSION SERVICE**

Where compensation is established on the  
basis of class enrollment; these are indicated  
by the following Class Codes:

2323 – Instructional Faculty, Extension – For  
Credit  
2363 – Instructional Faculty, Extension – For  
Non-Credit  
2322 – Instructional Faculty, Special Programs

**C. SUMMER SESSION/INTERSESSION**

Teachers or academic employees, who are  
otherwise fully employed, are excluded.

### EXCLUSIONS APPLICABLE ONLY TO UNIVERSITY OF CALIFORNIA

**A. EMPLOYEES HIRED AFTER OCTOBER 1, 1963**

Persons are excluded and are now subject  
to the University of California Retirement  
Plan (UCRP), rather than CalPERS.

**B. EXTENSION SERVICE**

Where compensation is established on the  
basis of class.

**C. SUMMER SESSION/INTERSESSION**

Teachers or academic employees, who are  
otherwise fully employed, are excluded.

## “OPTIONAL” MEMBERS OF CALPERS

The Government Code provides “optional” membership rights for certain public officers and employees. Those eligible “optional” members are excluded unless **an election** for membership is filed with CalPERS.

If membership is elected and established:

1. Other than the choice whether or not to elect retirement coverage, “optional” members are subject to the standard CalPERS laws and regulations that apply to non-optional members.
2. There is no Government Code provision to opt out of membership prior to separation from employment. Once elected, the membership must be continued for all future consecutive “optional” member positions with the same employer as long as the future positions are not excluded by law or contract.

### “OPTIONAL” MEMBERS

There are four classes of State employees that are eligible for “Optional” membership:

1. **State Officers Elected by the People** – The Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General or Insurance Commissioner may election membership by filing the [AESD-59 form](#). (Government Code Section 20322)
2. **Appointees of State Officers** – May elect membership by filing the [AESD-83 form](#). (Government Code Section 20320)

These include:

- a) Persons directly appointed by the Governor, without nomination of any officer or board. Normal membership eligibility must be met.

- b) Persons exempt from Civil Service, and directly appointed by the:
  - Attorney General
  - Lieutenant Governor
  - Controller
  - Secretary of State
  - Treasurer
  - Superintendent of Public Instructions (except for teaching staff of schools)

- c) Members of the Board of Prison Terms, the State Personnel Board, or the State Air Resources Board. (Government Code Section 20305(a)(5)).

3. **Officers of the Senate or Assembly** – elected by either or both such houses; may elect membership by filing the [AESD-59 form](#). (Government Code Section 20322(b))
4. **Legislative Employees** – Employees of the Senate or the Assembly, whose salaries are paid from the operating funds of the Senate or the Assembly; may elect membership by filing the [AESD-3 form](#). (Government Code Section 20324)

Note: Legislative Employees should use the [Public Agency Procedures Manual](#) for most of their questions, since they are not covered by the Uniform State Payroll System (USPS).

### GENERAL PROVISIONS/INSTRUCTIONS:

- “Optional” membership should not be established unless the eligible person signs an election to join CalPERS.
- Membership may be elected at any time while in an eligible position. However, membership is established on a prospective basis, usually with the effective date matching the first day of the pay period starting after the election for membership is signed.

## “OPTIONAL” MEMBERS OF CALPERS

- The position must be compensated other than just reimbursement of expenses.
- Any person concurrently employed in a position also covered by or potentially covered by CalPERS should first contact CalPERS to determine the impact should “optional” membership be elected.
- Any person concurrently employed in a position reportable to a private benefit plan or another retirement system should first contact that organization to determine if CalPERS membership will impact their benefits.
- A person appointed to an unexpired elected term of office has the same optional membership rights as if elected in his/her own right.
- Once “optional” membership is elected, it must be continued for all future consecutive “optional” member positions with the same employer, which are not excluded by law or contract. A member cannot receive a refund or retire from CalPERS while continuing to hold an optional position for which the membership was established. There is no provision to opt out of CalPERS membership while remaining in the position even if compensation is waived.
- **Legislative staff employees:** Though “optional” member status is provided by Government Code section 20324, membership cannot be established unless the employee is working qualifying time, based on the same criteria as applied to “non-optional” members. Service credit is reported according to actual time worked.

### PAST “OPTIONAL” MEMBERSHIP SERVICE CREDIT

- An “optional” member may elect to contribute and receive service for previous qualifying employment. Such election would not change the membership date back to the beginning date of the service purchased.
- A “**legislative staff employee**” (Gov. Code sec. 20324) shall have the option as to how much of his/her previous legislative service is to be credited.
- A person who is no longer in the “optional” member position, but is currently an active or inactive CalPERS member, may also elect to contribute for previous qualifying “optional” employment.
- See the booklet “Guide to Your Service Credit Options” for further instructions on submitting an additional service credit inquiry. Do not attach the inquiry to the [AESD-3](#), the [AESD-59](#) or the [AESD-83](#), it should be submitted separately to the address provided on the form.

## ELECTION OF OPTIONAL MEMBERSHIP

### AESD-3; AESD-59 OR AESD-83

#### PURPOSE

A complete and Signed "Election of Optional Membership", form [AESD-3](#); [AESD-59](#) or [AESD-83](#), is required to validate and establish membership for an individual who qualifies as an "optional" member. (Government Code sections 20324, 20322 or 20320.) The form must be submitted to CalPERS at the same time the employee enrollment is sent to the State Controller's Office in order to satisfy the legal requirements.

**REFER TO THE "OPTIONAL" MEMBERS OF CalPERS" SECTION TO DETERMINE "OPTIONAL" MEMBERSHIP ELIGIBILITY AND TO CLARIFY WHICH FORM TO USE.**

#### WHEN TO COMPLETE

The [AESD-3](#), [AESD-59](#) or [AESD-83](#) ("election form") should be completed only after it is determined that the individual does qualify for and requests "optional" membership.

- 1) The "optional" member must be advised of CalPERS rights when first eligible for membership but the election can be made at any time during the qualifying employment. Document in employer personnel records the fact that the information was provided as well as any direct response received. Do not send a notice to CalPERS if membership is declined.
- 2) The "election form" *should not be completed* as a request for additional information or service credit. It is to be used only when the person has decided to establish membership for the optional position.
- 3) The signed "election form" must be filed in CalPERS.
- 4) Complete the appropriate "election form" and membership transaction when a current active or inactive member assumes an "optional" member position and wishes membership for that office.

#### OTHER GENERAL PROVISIONS AND INSTRUCTIONS:

- 1) For CalPERS retirement purposes, "optional" members qualifying under Section 20322 are considered to be full-time employees. (Government Code section 20899) Exclusions such as temporary, part-time, daily-paid, etc., do not apply.
- 2) The "optional" member must receive compensation for membership to be established. Reimbursement of expenses is not considered compensation. Elimination or waiver of such compensation at a future date does not constitute a separation from membership as long as the person remains in an optional position with the employer.
- 3) Membership should not be established for an "optional" member unless the "election form" is signed and filed with the CalPERS Board of Administration in accordance with the "When to Complete" instructions.
- 4) Use a prospective membership effective date, usually the beginning date of next pay period so that it matches the effective date of contribution reporting to CalPERS. The membership date must be during the current term of appointment.
- 5) Submit the original signed "election form" to CalPERS; retain copies for the member and employer personnel records.
- 6) An "optional" member may elect to contribute and receive service for previous qualifying employment.
- 7) An officer or employee who is no longer in an "optional" position, but is currently an active or inactive CalPERS member, may also elect to contribute for previous qualifying "optional" employment.

## INSTRUCTIONS TO COMPLETE THE ELECTION OF OPTIONAL MEMBERSHIP AESD-3, AESD-59 OR AESD-83

ITEM	INSTRUCTIONS
Officer Title	Enter the title of the office held by the applicant.
Agency Name	Enter the name of the agency.
Agency Contact & Phone Number	Enter the name of the contact person and phone number of the contact person.
My Present Term Will Expire	Enter the date (month-day-year) on which the term will expire.
Printed Name in Full	Enter the employee's full name.
Signature	Enter the employee's signature.
Date	Enter the date the employee signed this election form.
Social Security Number	Enter the employee's Social Security number. Verify with the Social Security card.
Address	Enter the employee's address.
Daytime Phone Number	Enter the employee's daytime phone number.
City & State	Enter the employee's city and state.
Zip Code	Enter the employee's zip code.

## CALPERS MEMBERSHIP ELIGIBILITY

Persons who are **current** members of CalPERS do not need to “re-qualify” for membership. This applies **even** if membership was established through employment with another CalPERS agency or if they are not currently working and are on “inactive” status with CalPERS. If a person has funds on deposit or service credit with CalPERS, he/she is a current member. **Exception:** State Second-Tier members who are not vested and have been permanently separated for more than 6 months.

Many or most other employees should enter CalPERS membership **immediately upon employment** (Section 20281).

**Note:** Employees of the Department of Forestry and Fire Protection who qualify for State Peace Officer/Firefighter membership under Section 20392, or State Safety membership under Section 20400, also qualify for immediate membership, even if working less than full-time.

However, there are some employees who must work a certain number of hours/days (commonly referred to as “qualifying time”) before they are eligible for CalPERS membership, such as the following:

**FULL-TIME EMPLOYEES:** Persons in full-time employment whose appointment/employment does **not** fix a term of employment longer than six months should be monitored; if full-time employment actually continues for more than six months, membership is mandatory. The effective date is not later than the first day of the first pay period of the seventh month of employment.

**LESS THAN FULL-TIME EMPLOYEES:** For the majority of positions, CalPERS deems “full-time” employment to be **40 hours per week**; as defined by Section 20065, **any** amount of time worked less than this may be considered “less than full-time”. However, the most important and commonly used guideline to consider for less than full-time employees is **1000 hours or 125 days in a fiscal year**. (125 8-hour days equal 1000 hours.) This standard is the equivalent of a 20-hour week for 50

weeks out of the year and is stated in Government Code section 20305(a)(3)(B).

### CALIFORNIA STATE UNIVERSITY

**TEMPORARY FACULTY:** Must work half-time or more for either (1) two consecutive semesters, or (2) three consecutive quarters.

The general principles to follow to determine when and if someone is eligible for membership, if not excluded by contract or by law, are as follows:

1. Persons who are **already** members of CalPERS are **not** excluded from membership because they are working less than full-time. (Government Code section 20305(a)(1))
2. Persons enter membership upon appointment to a position with one of the following conditions:
  - a. The appointment/employment fixes a term of **full-time, continuous** employment in excess of six months.
  - b. The position requires **regular, part-time** service for at least an average of 20 hours per week (or its equivalent) for one year or longer.
3. Persons must otherwise be **monitored** to determine when and if they qualify for membership. Qualification for membership is reached when:
  - a. No term (length) of appointment is specified in the appointment/employment, but full-time employment continues longer than six months.
  - b. The person works more than 125 days in a fiscal year if paid on a “per diem” basis (i.e., “per day”). For this purpose, “day” means each 8 hours of compensated service; e.g. a firefighter working a 24-hour shift is working 3 “days” per shift.
  - c. The person works 1,000 hours in a fiscal year if paid on other than a per diem basis. Any overtime hours worked are counted as qualifying time.



## CALPERS MEMBERSHIP ELIGIBILITY

In such cases, membership becomes effective **no later than** the first day of the next pay period after (a) the sixth month of full-time employment or (b) completion of 1000 hours of 125 days in a fiscal year.

When monitoring an employee for the 1,000 hours, **all hours** the employee is compensated for should be counted towards membership qualification even if the compensation would not be reportable to CalPERS if the person was a member.

For example, if an employee were called in to work 4 hours on July 4<sup>th</sup>, which is a paid 8-hour holiday for the individual, then the employee would have 12 hours counted towards their membership qualification.

However, if this example applied to a member, then the 4 hours would be considered overtime and not reportable to CalPERS.

### FAILURE TO TIMELY ENROLL A MEMBER

It is the employer's responsibility to determine if its employees are eligible to participate in CalPERS. If an employer has failed to enroll an eligible employee into CalPERS membership within 90 days of qualifying when the employer knows or can reasonably be expected to have known of that eligibility, the employer shall be responsible for arrears of the member contributions and a \$500 administrative cost per member. Funds for the applicable period of time will be transferred out of the employer reserve account to the member account as pre-tax contributions regardless of whether or not the employer reports tax deferred member contributions. The \$500 administrative cost per member will be transferred from the employer reserve account to CalPERS' current year budget. Please note that the administrative cost "is not a fee or penalty" to the agency – rather, it is a reimbursement to CalPERS for costs associated with the process administering Government Code section 20283. Employer contributions will be absorbed through the rate-setting process, and employers will not be billed directly for those contributions.

### DETERMINING IF A PART-TIME SEASONAL EMPLOYEE IS ELIGIBLE FOR MEMBERSHIP

1. Look for PIMS/CSUC transactions to check if a new employee is already a member of CalPERS. If employee is already a member of CalPERS, that employee should be immediately reported to CalPERS.
2. Look for account codes on an employee's records, which indicate that the employee has previously worked for a State agency or California State University.
3. Look at completed Employee Action Request (EAR), section G, to see if a State agency or California State University employed the employee.
4. Ask newly hired employees if they are a member of CalPERS and document it in writing. A Public Agency or County School could have formerly employed some members.
5. Concurrent hours worked in multiple part-time positions must be summed.

### NOTICE OF EXCLUSION FROM CalPERS MEMBERSHIP

For employees who do not qualify for CalPERS membership, the "Notice of Exclusion from CalPERS Membership" ([PERS-AESD-139](#)) should be completed. The completed form should be given to the employee in order to inform them of the specific reason for their exclusion and to fulfill the employer's responsibility of notification. Do **NOT** send copies of this form to CalPERS, although, a copy should be kept with the employee's records.

## INSTRUCTIONS TO COMPLETE THE NOTICE OF EXCLUSION FROM CALPERS MEMBERSHIP ([AESD-139S](#))

ITEM	INSTRUCTIONS
Social Security Number	Enter the employee's Social Security number. Verify with the Social Security card.
Current Name	Enter the employee's full name.
Name of Department	Enter agency's name.
Job or Position Title	Enter the employee's job or position title.
Term of Appointment	Check permanent or temporary.
If Temporary	For limited-term appointments, enter the number of months the appointment is expected to last.
Appointment Date	Enter the date when compensation for employment begins.
Time Base	Enter "X" in the box that identifies the time schedule this employee will work. If PART-TIME is selected, enter the fraction of FULL-TIME in the lines provided at the far right of this line. This fraction <i>must</i> be expressed as a 3-digit numerator over a 3-digit denominator (whether you use hours, percentage or a fraction in figuring PART-TIME earnings for your employee.) When either the numerator or denominator is not a 3-digit number, be sure to enter zeros to the left so that all the boxes are filled. Do not use decimal points in the blocks.

### Time Base Examples:

- |       |   |                |
|-------|---|----------------|
| 1) a. | Number of hours per week to be worked         | 30 hours       |
|       | Number of hours per week considered FULL-TIME | 40 hours       |
|       | Enter Fraction                                | <u>030/040</u> |
| b.    | Number of hours per week to be worked         | 31.5 hours     |
|       | Number of hours per week considered FULL-TIME | 40 hours       |
|       | Enter Fraction                                | <u>315/400</u> |
| 2)    | Percentage of time to be worked               | 56.3%          |
|       | FULL-TIME                                     | 100%           |
|       | Enter Fraction                                | <u>056/100</u> |
| 3)    | Fraction of time                              | 3/4            |
|       | Enter Fraction                                | <u>003/004</u> |

## INSTRUCTIONS TO COMPLETE THE NOTICE OF EXCLUSION FROM CALPERS MEMBERSHIP (AESD-139S)

ITEM	INSTRUCTIONS
Seasonal or Limited-Term Appointment	An employee whose full-time, seasonal, or limited-term employment is limited to six months or less is excluded from membership
Less than 20 hours per week Appointment	A part-time employee employed to work less than an average of 20 hours per week is excluded from membership.
Irregular or Intermittent	An employee is excluded from membership if appointed on an on-call, intermittent, emergency, substitute, or other irregular basis until the employee has worked 1,000 hours or 125 days if paid on a per diem basis in the fiscal year (July 1 through June 30).

NOTE: The above exclusions do not apply to persons who have funds on deposit or service credit with CalPERS. Check with employee for current membership status.

ITEMS	INSTRUCTIONS
Position excluded by law	Please refer to page 51 of the State Handbook for a listing of excluded positions.
Independent Contractor	Independent contractors or employees of independent contractors who are not employees of the agency are excluded from membership. See "Positions Excluded by Retirement Law", Paragraph B in this chapter.
Signatures	Self-explanatory.

## FIRST-TIER VS. SECOND TIER

Is the miscellaneous or industrial employee a previous member of CalPERS (do they have service and/or funds on deposit from another contracting Public Agency, County School or State agency that is under CalPERS)?

- NO – Refer to [“CalPERS Membership Eligibility”](#) in the “Membership – Civil Service/CSU” section to determine when to bring the employee into membership. Once the employee qualifies for CalPERS membership, place the employee into First-Tier and provide the employee with the [“State Miscellaneous and Industrial Members Retirement Election Package” \(PERS-PUB-52\)](#).
- YES – See chart below

All First-Tier Service (Public Agency, County School or State)	Mixed Tier* Service	All State Second-Tier Service only (no State First-Tier, Public Agency or County School Service)		
		Permanent Separation is Less than 90 days	Permanent Separation is 91 days to Six Months	Permanent Separation is over Six Months
<ul style="list-style-type: none"> <li>• The employee is brought into CalPERS membership immediately.</li> <li>• Place the employee into First-Tier.</li> <li>• Provide the employee with the <a href="#">PUB-52</a>.</li> </ul>	<ul style="list-style-type: none"> <li>• The employee is brought into CalPERS membership immediately.</li> <li>• If break in service is more than 90 days, place the employee into First-Tier.</li> <li>• Provide the employee with the <a href="#">PUB-52</a>.</li> <li>• If break is less than 90 days, see 1, 2 or 3 below.</li> </ul>	<ul style="list-style-type: none"> <li>• The employee is brought into CalPERS membership immediately.</li> <li>• Place the employee into Second-Tier.</li> </ul>	<ul style="list-style-type: none"> <li>• The employee is brought into CalPERS membership immediately.</li> <li>• Place the employee into First-Tier.</li> <li>• Provide the employee with the <a href="#">PUB-52</a>.</li> </ul>	<ul style="list-style-type: none"> <li>• The employee needs to re-qualify for CalPERS membership.</li> <li>• Upon meeting CalPERS' membership qualifications, place the employee into CalPERS membership.</li> <li>• Place the employee into First-Tier.</li> <li>• Provide the employee with the <a href="#">PUB-52</a>.</li> </ul>

\*Mixed Tier Service (break in service is less than 90 days):

1. If the member's last appointment was State Second-Tier, place the member in the State Second-Tier and do not provide the [PUB-52](#).
2. If the member's last appointment was State Safety and the member has **elected** to convert their past State Second-Tier service to the First-Tier service, place the member into the State First-Tier and do not provide the [PUB-52](#).
3. If the member's last appointment was State Safety and the member has **not elected** to convert their past State Second-Tier service to First-Tier service, place the member into the State Second-Tier and do not provide the [PUB-52](#).

The member may contact CalPERS' Customer Contact Center at (800) 352-2238 to receive the election material to elect into the State First-Tier for future and/or past State Second-Tier service.

## CALPERS OR CALSTRS

Public school positions in California are divided into two basic types:

1. **CERTIFICATED:** An employee in a position requiring certification qualifications by or pursuant to the Education Code. Credentialed employees (e.g., teachers, administrators, health care, library media workers, etc.) are all in certificated positions.
2. **CLASSIFIED:** An employee in a non-certificated position (e.g., office workers, custodial staff, cafeteria workers, etc.).

In general terms, employees in certificated positions are, upon meeting normal qualification requirements, eligible for membership in the [California State Teachers' Retirement System \(CalSTRS\)](#), while classified employees may be eligible for membership in CalPERS.

Pursuant to Government Code sections 20300(g), 20501 and 20580, CalPERS can cover school employees only with respect to employment in which they are not eligible for [CalSTRS](#) coverage. Some persons who are **eligible** for membership in [CalSTRS](#) or CalPERS may not actually **qualify** for membership in either system (due to "part-time" or "temporary/seasonal" status, etc.); thus, some school employees may not be members of either system until their working hours or conditions change.

The Education Code (which contains the laws governing [CalSTRS](#)) contains two basic provisions, which may give persons certain rights with regard to choosing coverage under one system or the other:

**Education Code section 22508(a):** A person who is a [CalSTRS](#) member, who subsequently is employed by a school district or a county superintendent (or by the State in other certain cases; see "Inclusion" section below) in a position which requires CalPERS membership (e.g., a classified position), will enter CalPERS membership in the new position. However, he or she may elect to remain a member of [CalSTRS](#) in the new position.

**Education Code section 22508(b):** A CalPERS member employed by a school district or a county superintendent, the State Department of Education, or the Board of Governors of the California Community Colleges, who then is employed in a position requiring [CalSTRS](#) membership (e.g., a certificated position), will enter [CalSTRS](#) membership in the new position. However, he or she may elect to remain a member of CalPERS in the new position.

### INCLUSION OF CERTAIN STATE EMPLOYEES

#### 1. Employees in Certain State Bargaining Groups

SB 1694 (Chapter 880, Statutes of 2000) amended Section 22508 of the Education Code, and now provides that this same election right will be given to [CalSTRS](#) members that enter State employment where one of the following conditions apply:

- A. The employee is represented by a State Bargaining Unit that represents educational consultants, professional educators, or librarians employed by the state; OR
- B. The employee is excluded from the definition of "State employee" in G.C. Section 3513(c), yet performs, manages or supervises work similar to employees under Subparagraph "A" above; OR
- C. The employee is in a non-civil service position in the Executive branch, yet performs, manages or supervises work similar to employees under Subparagraph "A" above.

SB 1694 (Chapter 880, Statutes of 2000) amended Section 20309 of the Government Code, and now provides that this same election right will be given to CalPERS members that enter employment which requires membership in [CalSTRS](#) where the following conditions apply:

## CALPERS OR CALSTRS

- A. The member is employed by the State Board of Governors of the Community Colleges or the State Department of Education;
- B. The employee obtains a position that requires employment with the county schools and community colleges after 9-11-2000.

SB 165 (Chapter 77, Statutes of 2001) again amended Government Code section 20309, which will also allow CalPERS members with five years of CalPERS credited service, who enter employment on or after 1-1-2002 that requires membership in CalSTRS, the right to elect to remain in CalPERS. The five years of service accrued under CalPERS can be with the State of California, Public Agency or County School employment or a combination thereof.

### 2. Persons Entering State Second-Tier Membership Between July 1, 1991 and September 11, 2000

AB 649 (Chapter 402, Statutes of 2000) added Section 22508.6 to the Education Code and Section 20309.5 to the Government Code, and provides that a "vested" CalSTRS member who enters State employment subject to the Second-Tier benefit plan may elect to have this service subject to CalSTRS rather than CalPERS, under the following conditions:

- 1. The member must have entered State employment within 30 days of separation from CalSTRS-covered employment;
- 2. The member must have had no other intervening employment;
- 3. The change of employment occurred between July 1, 1991 and September 11, 2000;
- 4. The member must be subject to the State Second Tier.
- 5. The member meets one of the following criteria:
  - A. Is represented by a State Bargaining Unit that has agreed to an MOU making their represented employees subject to Section 20309.5;

- B. Is excluded from the definition of "State employee" in G.C. Section 3513(c), yet performs, manages or supervises work similar to employees under Subparagraph "A" above;
- C. Is in a non-civil service position in the Executive branch, yet performs, manages or supervises work similar to employees under Subparagraph "A" above.

These elections must be made in writing by completing the "Retirement System Election ([MR-372](#))". This form can be obtained from the CalSTRS web site [www.calstrs.ca.gov](http://www.calstrs.ca.gov). Send the completed form to CalSTRS and a copy to CalPERS. This form must be filed **within 60 days** of entry into the new position. The election filed must be signed and dated by **both** the employee and employer. It should also indicate the date the employee entered the new position.

Send elections to:

**CalSTRS**

**P.O. Box 15275**

**Sacramento, CA 95851-0275**

**CalPERS**

**Member Services Division/Unit 841**

**P.O. Box 942704**

**Sacramento, CA 94229-2704**

This right of election arises when the employee enters a position or has a major change in conditions of employment that requires membership in the other retirement system. If a person does not exercise the right of election **within 60 days** from their date of hire into the position, the right does **not** arise again. Once a person **does** exercise this right of election, this election is **irrevocable** and will remain in effect for **all** future school employment unless and until the person separates from employment and receives a refund of all accumulated contributions and interest.

## CALPERS OR CALSTRS

Should the employee return to employment and upon qualification, the employee would become a member of the retirement system that they qualify for in that position.

Use the chart following this section as a guide to determine the retirement system coverage for the employee.

The **Education Code** (which governs CalSTRS), not the **Government Code** (which governs CalPERS), contains the laws regulating this election of coverage. The final decision in any questionable situation (e.g., acceptance of "late" elections) must be made by CalSTRS, not CalPERS.

### DIFFERENCES BETWEEN CalPERS AND CalSTRS

There are a number of factors that might influence a person's decision about coverage under one system or the other. Some of the differences between the two systems are the following:

1. CalPERS members may or may not have Social Security coverage (most do), whereas CalSTRS members generally do not;
2. The Benefit Factors based on age for service retirement may be different;
3. The employee contribution rates may be different;
4. Persons entering membership in either system between July 1, 1980 and December 31, 1998 may not be eligible to convert unused sick leave Credits to service credit at retirement.

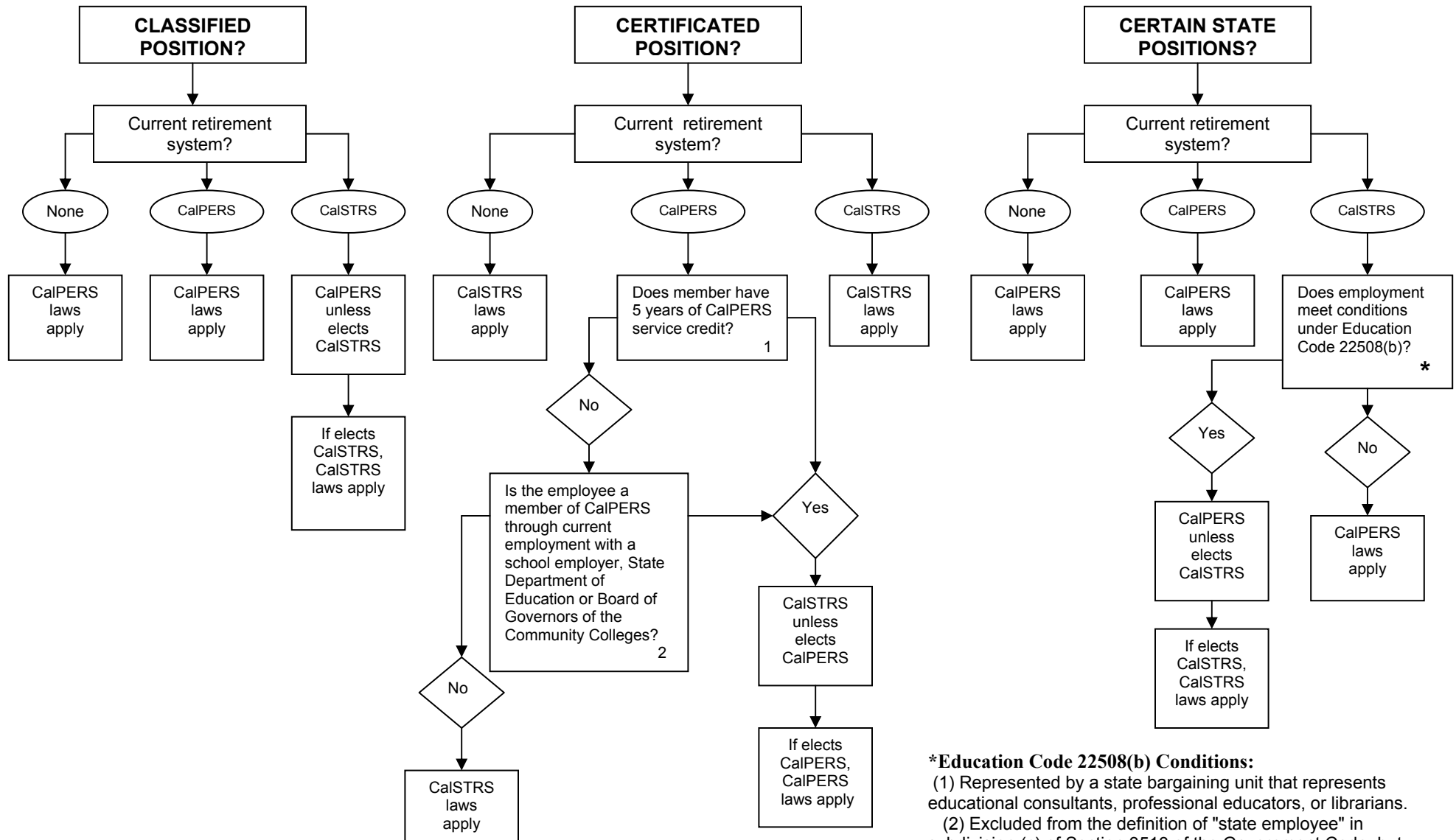
We suggest you contact CalSTRS or the Member Services Division at CalPERS if you have any specific questions or need additional information relating to an employee's choice of coverage.

**CalSTRS 1-800-228-5453 or (916) 229-3870 TDD (916) 229-3541**  
[www.calstrs.ca.gov](http://www.calstrs.ca.gov)  
**Membership Division (916) 229-3806**

### ADDITIONAL INFORMATION:

1. A person is a "member" of CalPERS or CalSTRS unless they have permanently separated from all employment covered by the system **and** received a refund of his or her contributions and interest on deposit.
2. It **is** possible to be an active (i.e., currently employed) member of **both** CalSTRS and CalPERS as long as this dual coverage is for different positions.
3. The right of election arises for a CalPERS member through school employment, Board of Governors, and the State Department of Education. If a person has CalPERS membership through some other type of employer (most State or contracting Public agencies), the right of election of coverage to remain a CalPERS member arises only if the member has attained 5 years of service and changes positions on or after January 1, 2002.
4. The right of election arises **after** one has been hired in a position that would be covered by the other retirement system. However, membership qualifications must be met in that retirement system, prior to appointment into membership with the retirement system.
5. The election only needs to be filed with the system indicated by the Education Code section (see previous page); if you send a duplicate copy to the other system for informational purposes, it should be clearly labeled "COPY".

# CalPERS/CalSTRS RETIREMENT SYSTEM ELECTION



1 Government Code Section 20309 (Chap. 77, Stats. 2001) effective 1-1-2002

2 Government Code Section 20309 (Chap. 880, Stats 2000) effective 1-1-2001

## \*Education Code 22508(b) Conditions:

(1) Represented by a state bargaining unit that represents educational consultants, professional educators, or librarians.

(2) Excluded from the definition of "state employee" in subdivision (c) of Section 3513 of the Government Code, but performing, supervising, or managing work similar to work performed by employees described in paragraph (1).

(3) In a position not covered by civil service and in the executive branch of government, but performing, supervising, or managing work similar to work performed by employees described in paragraph (1).



## OVERTIME POSITIONS

Overtime may not be reported in membership to CalPERS, either as compensation, or as employment, which will result in service credit being given. Government Code section 20635 defines "overtime" as follows:

"(T)he aggregate service performed by an employee as a member for all employers and in all categories of employment in excess of the hours of work considered normal for employees on a full-time basis, and for which monetary compensation is paid."

Some situations, which may arise in this connection, are as follows:

1. The member currently holds one full-time position subject to CalPERS, and accepts a second concurrent part-time position. **RESULT:** The part-time position is deemed to be "overtime", and may not be reported to CalPERS.
2. The member holds more than one part-time position with the same CalPERS covered employer. **RESULT:** The part-time positions cannot, when added together, generate more than full-time service and/or contributions to CalPERS. In most cases, CalPERS considers 40 hours a week to be the standard full-time time base. Therefore, the employer must limit the earnings/service reported to CalPERS for one or both positions so that the full-time limit is not exceeded.
3. The member works more than one full-time position, either with the same employer (e.g., a school district) or with more than one CalPERS covered employer. **RESULT:** A determination must be made by CalPERS and/or the member as to which employer will be reported to CalPERS as the "basic employer".

Pursuant to changes made in Section 20635 by Senate Bill 53, Chapter 1297, Statutes of 1993, the treatment of **more than one full-time position** has been changed; the crucial distinction now is whether the service in question was worked **before** or **after July 1, 1994**:

**BEFORE JULY 1, 1994:** The member has the right to elect which of the two full-time positions will be reported to CalPERS; CalPERS will, upon discovery of the second full-time position, send the member an election allowing this choice to be made. If no election is made (i.e., if the member does not respond to CalPERS' notification of election rights), the employment with the latest hire date will be deemed the non-reportable "overtime" position.

**AFTER JULY 1, 1994:** The position with the highest pay rate or base pay should be reported to CalPERS, with the other position deemed the non-reportable "overtime" position.

If the service began **before** July 1, 1994 and continues **after** July 1, 1994, the member will have the election rights indicated above **only** for the service before July 1, 1994. Service after July 1, 1994 will require the position with the highest payrate to be reported to CalPERS.

**NOTE:** Check with your employee to see if they are currently employed at another CalPERS agency. IF unsure, contact the Actuarial and Employer Services Division for verification.